IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.438 OF 2005

Snehadeep Structures Pvt.Ltd. ...Petitioner

Vs.

The Maharashtra Small Scale Industries Development Corporation Ltd. ...Respondent.

Mr.Sham Diwan with Ms.Chandana Salgaonkar-Radia & Vivek Menon, for Petitioner.

Mr.M.P.S.Rao i/b. A.C.Mahimkar, for Respondent.

CORAM: D.K.DESHMUKH, J.

DATED: 24th April,2006

P.C.:-

1. By this petition the petitioner challenges the Award made by the sole Arbitrator holding that the petitioner is not entitled to any interest under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings (hereinafter referred to as the "Interest Act"). The facts that are relevant and material are that the

respondent- Maharashtra Small Scale Industrial Development Corporation entered into a contract with MSEB for supply of certain goods on the terms and conditions contained in the Contract. According to the terms of that contract, the MSEB had agreed to make payment of part of the amount to the respondent within 3 to 7 days. The sub contract was awarded by the respondent- Corporation to the petitioner. The terms and conditions contained in the contract between the MSEB and the Corporation were incorporated in the sub-contract between the respondent- Corporation and the petitioner. There were certain additional terms and conditions agreed to between the parties. Clause 25 of the terms between the petitioner and the respondent states that the Corporation will make payment for the goods supplied by the petitioner to the MSEB after receiving payment for the same from MSEB. The learned Arbitrator has held that though clause 47 of the contract between the MSEB and the respondent-Corporation gets incorporated in the contract between the petitioner and the respondent, in view of clause 25 of the contract between the petitioner and the respondent- corporation, the respondent becomes liable to make payment of the price of the goods supplied by the petitioner only after the respondent- Corporation receives payment from the MSEB, and therefore, under the unamended provisions of the Interest Act no interest becomes payable by the respondent to the petitioner on expiry of the period of 3 to 7 days and 21 days as

contemplated by clause 47 of the Contract between the respondent-Corporation and MSEB, and therefore, the Award for interest under the Interest Act has been declined. The learned Counsel appearing for the petitioner submits that as clause 47 of the contract between the respondent and MSEB gets incorporated in the contract between the petitioner and the respondent, the respondent becomes liable to make payment of the price of the goods to the petitioner on expiry of the period which is mentioned in clause 47. According to the learned Counsel, therefore, the liability of the respondent to make payment to the petitioner arises on expiry of the period which is mentioned in clause 47 and therefore, if the payment is not made within that period, there is liability on the respondent to pay interest under the unamended provisions of the Interest Act.. In my opinion, the submission is not well founded. Because the submission totally ignores clause 25 which is specifically agreed between the petitioner and the respondent. The terms of the contract between the respondent-Corporation and the MSEB though made part of the contract between the petitioner and the respondent, they will constitute general terms of the contract whereas the terms agreed to between the petitioner and the respondent will be the special terms of the contract which will be binding on the petitioner and the respondent. Clause 25 clearly does not contemplates any liability being imposed on the respondent to make any payment to the

petitioner without respondent receiving the payment from MSEB. In view of clause 25 of the Contract between the petitioner and the respondent as the liability to make payment by the respondent to the petitioner does not arise unless and until the respondent receives payment from the MSEB and therefore, there is no question of any liability to pay interest under the unamended provisions of the Interest Act arising. Though it is true that once having held that there is no liability to make any payment to the petitioner unless the Corporation/respondent receives payment from MSEB, the learned Arbitrator was not justified in holding that liability to make payment of interest would arise on expiry of period mentioned in the clause 47 after the Corporation receives payment from MSEB. Because even if clause 47 is taken to be a part of the contract between the petitioner and the Corporation then also that clause does not fix any date for the respondent to make payment to the petitioner. By clause 47 date is fixed for MSEB to make payment to the Corporation. There is no term in the contract which fixes date or time for the Corporation to make payment to the petitioner. However, as relying on that finding the learned Arbitrator has not directed making of any payment to the petitioner, in my opinion, for that reasons the Award cannot be set aside. In any case the construction placed by the learned arbitrator on the terms of the Contract is a possible construction and therefore, even assuming that it is possible to construe the terms of the contract some

other way, considering the limited jurisdiction conferred by Section 34 of the Act on the Court to disturb an award, the award cannot be disturbed.

2. Taking overall view of the matter therefore, in my opinion, there is no substance in the petition. It fails and is dismissed. The petitioner is directed to pay cost of this petition to the respondent as incurred by the respondent.